

From: Cynamon, David J.
Sent: Tuesday, October 13, 2009 2:16 PM
To: Chris Flavelle
Subject: FW: Al Rabiah contempt motion

Chris, in light of your Slate article, I thought you might be interested in the attached contempt motion, which we filed today. The Court has set November 2 as the deadline for the government's response (unfortunately, longer than we would prefer, but understandable because the habeas hearing for our fourth and final Kuwaiti client begins this coming Monday).

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

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CONFIDENTIAL
10/13/09 11:44 AM
10/13/09 11:44 AM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAWZI KHALID ABDULLAH)	
FAHAD AL ODAH, <i>et al.</i> ,)	
)	
Petitioners,)	
)	Civil Action No. CV 02-0828 (CKK)
v.)	
)	
UNITED STATES, <i>et al.</i> ,)	
)	
Respondents.)	
)	

**MEMORANDUM IN SUPPORT OF PETITIONER FOUAD AL RABIAH'S
MOTION FOR ORDER TO SHOW CAUSE WHY RESPONDENTS
SHOULD NOT BE HELD IN CONTEMPT OF COURT AND TO
TRANSFER HIM TO KUWAIT WITHIN FIFTEEN DAYS**

Petitioner Fouad Al Rabiah ("Al Rabiah"), submits this memorandum in support of his motion for an order requiring Respondents Secretary of Defense Robert M. Gates and Rear Admiral Tom Copeman¹ to show cause why they should not be held in contempt of this Court's Order of September 17, 2009, to "take all necessary and appropriate diplomatic steps to facilitate the release of Petitioner Al Rabiah forthwith" (hereinafter, "Release Order") and ordering Respondents to transfer Al Rabiah to Kuwait no later than fifteen days from the date of the order.

In defiance of the Release Order, Respondents have failed to take any steps to facilitate Al Rabiah's release and have no justification for this failure. The Government of the State of Kuwait ("Kuwait") has repeatedly requested Al Rabiah's prompt repatriation. Al Rabiah could and should have been returned to Kuwait at the same time, and on the same aircraft, as Petitioner

¹ Pursuant to Fed. R. Civ. P. 25(d), Rear Admiral Tom Copeman, the current commander of Joint Task Force Guantanamo, should be substituted for Respondent Rear Admiral David M. Thomas, Jr., the former commander.

Khalid Al Mutairi, who was finally returned to Kuwait on October 8, 2009, more than two months after this Court ordered his release. Respondents, however, have made clear that they will do nothing to comply with Al Rabiah's Release Order unless and until they are forced to do so by the Court. Accordingly, the Court should hold Respondents in contempt and order them to transfer Al Rabiah to Kuwait by a specified date no more than fifteen days (the Congressionally-mandated "waiting period") from the date of its order.

STATEMENT OF FACTS

Respondents and their predecessors have kept Al Rabiah wrongfully imprisoned in Guantanamo since early 2002. After more than seven years of litigation and two Supreme Court victories, Al Rabiah finally received a fair and impartial judicial hearing into the legality of his detention beginning on August 26, 2009. On September 17, 2009, this Court issued its Release Order, granting Al Rabiah's habeas petition and ordering the government to take "all necessary and appropriate diplomatic steps to *facilitate* the release of Petitioner Al Rabiah *forthwith*." (Emphasis added.)

On August 3, 2009, the Head of State of Kuwait met with President Barack Obama and, among other things, asked the United States promptly to repatriate the four Kuwaiti citizens detained at Guantanamo, including Al Rabiah. *See* Declaration of David J. Cynamon ("Cynamon Decl.") ¶ 3. On September 21, 2009, four days after the Release Order was issued, the Prime Minister and Foreign Minister of Kuwait again requested U.S. officials to return the Kuwaitis, including Al Rabiah. *Id.* ¶ 4. Yet, despite these requests, and despite the Court's clear directive, Respondents have taken no action to comply with the Release Order. On the contrary, in response to requests from Al Rabiah's counsel that the government comply with the Release Order, Respondents' counsel advised that the government will do nothing until Respondents

determine whether to appeal the Release Order, even though Respondents have made no effort to seek or obtain a stay pending appeal – in effect, unilaterally granting themselves a 60-day stay of the Release Order. Cynamon Decl. ¶¶ 11-13, 16 and Exhs. C-F, I thereto.

ARGUMENT

A. Respondents Have Failed Even To Attempt To Comply with The Release Order and Should Be Held in Civil Contempt of Court

There is no question that this Court has both the “inherent and a statutory power to enforce compliance with its orders through the remedy of civil contempt.” *SEC v. Bilzerian*, 112 F. Supp. 2d 12, 16 (D.D.C. 2000) (citing *Shillitani v. United States*, 384 U.S. 364, 370 (1966)); see also *Lee v. Dep’t of Justice*, 401 F. Supp. 2d 123, 130 (D.D.C. 2005). “Civil contempt is a remedial device intended to achieve full compliance with a court’s order.” *SEC v. Bankers Alliance Corp.*, 881 F. Supp. 673, 678 (D.D.C. 1995). “The contemnor’s intent is immaterial; the Court need not determine whether a failure to comply with its order was either willful or intentional.” *Lee*, 401 F. Supp. 2d at 131; see also *Food Lion v. United Food & Commner. Workers Int’l Union*, 103 F. 3d 1007, 116-17 (D.C. Cir. 1997).

The Release Order is straightforward. It requires the government to take whatever diplomatic steps are necessary to “effectuate Al Rabiah’s release forthwith.” The plain meaning of “effectuate” is “to bring about,” *The American Heritage Dictionary* at 439 (2d ed. 1991), and the plain meaning of “forthwith” is “immediately, without delay.” *Black’s Law Dictionary* at 225 (9th ed. 2009); *The American Heritage Dictionary* at 527. Thus the Release Order requires the government to do whatever is necessary and appropriate to bring about Al Rabiah’s immediate release.

Compliance with that directive should have been easy. Unlike some detainees, Al Rabiah is a citizen of a country that wants him back, to which he wants to return, and in which he will

face no risk of persecution or human rights violations. Since Kuwait, at its highest level, has specifically asked the United States to repatriate Al Rabiah, the only diplomatic steps necessary and appropriate to bring about his immediate release would be to make arrangements for a Kuwaiti aircraft and personnel to land at Guantanamo to retrieve him.

Indeed, Al Rabiah's return should have been particularly simple because, as of the date that the Court issued his Release Order, the Government of Kuwait had already agreed to conditions demanded by the U.S. Government for the return of all of the Kuwaiti detainees, and Respondents had already arranged for the return of Petitioner Al Mutairi (albeit only after Petitioners had been forced to threaten a contempt motion). Cynamon Decl. ¶¶ 5-10 and Exhs. A-B thereto. Yet, when Petitioners' counsel requested that Al Rabiah be returned with Al Mutairi, Respondents flatly refused. *Id.* at ¶¶ 11-13 and Exhs. C-E thereto.

Three weeks after the Release Order was issued, Al Rabiah remains in Guantanamo, in the same prison camp and cell in which he was imprisoned prior to the Release Order. Cynamon Decl. ¶ 14. He continues to be treated as a prisoner in all respects; he has been denied transfer to Camp Iguana, where prisoners whose habeas petitions have been granted are housed in less restrictive conditions, and he has been denied even the opportunity to call his family to discuss the favorable decision in his case and his reintegration into his family and Kuwaiti society. *Id.* ¶¶ 15-16 and Exhs. G-H thereto.

The only excuse provided by Respondents for their disregard of the Release Order is that "the government is continuing to consider its appellate options in Mr. Al Rabiah's case." Cynamon Decl. ¶¶ 13, 16 and Exhs. E and I thereto. As Respondents are well aware, however, the Release Order is final and enforceable absent a stay pending appeal, and Respondents have neither sought nor obtained such a stay. *See* Fed. R. App. Proc. 8(a); Fed. R. Civ. Proc. 62(a).

Respondents' reliance on this legally frivolous ground for ignoring the Release Order and effectively granting themselves a 60-day stay confirms that contempt is both a necessary and appropriate remedy to enforce compliance, and that only an order requiring the government to transfer Al Rabiah by a date certain will "effectuate his release forthwith."

B. *Kiyemba v. Obama* Does Not Preclude the Court from Issuing Contempt Sanctions in this Case and From Ordering Al Rabiah's Transfer To Kuwait

The D.C. Circuit's recent decision in *Kiyemba v. Obama* has no bearing on the Court's power to issue contempt sanctions or a transfer order here. 555 F.3d 1022 (D.C. Cir. 2009), *petition for certiorari filed*, 77 U.S.L.W. 1623 (U.S. Apr. 14, 2009). In *Kiyemba*, a group of Chinese Uighurs petitioned the court for an order compelling their release into the United States. 555 F.3d at 24. The Uighurs, a Turkic Muslim minority group from western China, had been held at Guantanamo Bay for nearly seven years when the D.C. Circuit ruled that the government could no longer detain them. *Id.* at 1023-24. However, the United States could not release the Uighers into China because there they could be subjected to arrest, torture or execution. *Id.* Nor could the government locate an appropriate third country in which to resettle the detainees. *Id.* Because the government could no longer legally detain the Uighers, and they had nowhere else to go, the district court ordered the government to release them in the United States. *Id.* at 1023. The Court of Appeals reversed, holding that the district court did not have the power to invade the sphere of the Executive Branch and order aliens brought into this country. *Id.* at 1026-29.

The Court in *Kiyemba* did not question what it referred to as the "undisputed proposition" that "[t]he power to grant the writ [of habeas corpus] means the power to order release." *Id.* at 1029. Instead, the sole issue in that case was "not whether petitioners should be released, but where." *Id.* Here, in contrast to *Kiyemba*, Pctitioner does not seek release into the United States. There is no question of the Court usurping the Executive Branch's "inherent sovereignty" to

exclude aliens from this country. *Id.* at 1025. The issue is merely one of this Court exercising its inherent power to sanction noncompliance with its order that Respondents take the necessary and appropriate steps to bring about his immediate release. In this case, as demonstrated above, those steps can easily be accomplished because there is in fact a country – Kuwait – to which he can immediately be returned. The Court’s power to enforce its Release Order in these clear-cut circumstances is not called into question by *Kiyemba*. In addition, the district court in *Kiyemba* seemingly relied on the Due Process Clause of the Constitution when it ordered the release of the Uighers into the United States. *Id.* at 1026. Petitioners here have no need to call upon the Due Process Clause in requesting a contempt citation, but instead seek the invocation of the Court’s inherent contempt power.

Furthermore, the primary factual predicate for *Kiyemba* was that “[r]eleasing petitioners to their country of origin pose[d] a problem.” *See id.* at 1024. Fears of mistreatment are not a factor in this case. As already explained, Kuwait is eager to welcome Al Rabiah home, and he is eager to go. Cynamon Decl. ¶¶ 3-4. The only thing preventing his “release forthwith” is Respondents’ refusal to comply with the Release Order.

The Court recently rejected a similar argument by the government in *Ahmed v. Obama*, No. 05-1678 (GK). In that case, Judge Kessler granted the petition for habeas corpus on May 4, 2009, and issued an order requiring the government “to take all necessary and appropriate diplomatic steps to facilitate [Ahmed’s] release forthwith.” *Ahmed*, Order filed May 4, 2009 [dkt 212] (copy attached hereto at Tab 1). After the government failed to comply with the order, the petitioner sought enforcement, and the Court granted relief in the form of an order specifically requiring the government to transfer the petitioner to his home country, Yemen, on or before September 24, 2009. *Ahmed*, Order filed October 1, 2009 [dkt 249] (copy attached hereto at Tab

2).² This Court, likewise, has the authority to order the government to transfer Al Rabiah to Kuwait by a date certain, and given Respondents' complete disregard for the Court's release orders, the Court should exercise that authority. Because the Release Order currently obligates the government to ensure Al Rabiah's release "forthwith," it is appropriate for the Court to order the government to transfer Al Rabiah to Kuwait within fifteen days (the Congressionally-mandated "waiting period") of the date of its order granting this motion.

CONCLUSION

For the foregoing reasons, Petitioner Al Rabiah respectfully requests that the Court order Respondents to show cause why they should not be held in civil contempt for failure to comply with this Court's September 17, 2009 Release Order and order Respondents to transfer Al Rabiah to Kuwait within fifteen days of the order.

Dated: October 13, 2009

Respectfully submitted,

/s/

David J. Cynamon (D.C. Bar #182477)

david.cynamon@pillsburylaw.com

Matthew J. MacLean (D.C. Bar #479257)

matthew.macleam@pillsburylaw.com

Thomas G. Allen (D.C. Bar # 484425)

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Attorneys for Petitioners

² The proceedings leading to this Order occurred at a closed hearing dated September 11, 2009, the transcript of which reflects the arguments made by the government and rejected by the Court. *See also Jawad v. Obama*, Civ. Action No. 05-2385 (ESH), Order filed July 30, 2009 [dkt 323], copy attached hereto at Tab 3.

Certificate of Service

I certify that on October 13, 2009, I caused the foregoing to be served on all opposing counsel through the electronic case filing system.

/s/
Matthew J. MacLean

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAWZI KHALID ABDULLAH)
FAHAD AL ODAH, *et al.*,)

Petitioners,)

v.)

UNITED STATES, *et al.*,)

Respondents.)

Civil Action No. CV 02-0828 (CKK)

**MOTION OF PETITIONER FOUAD AL RABIAH
FOR ORDER TO SHOW CAUSE WHY RESPONDENTS
SHOULD NOT BE HELD IN CONTEMPT OF COURT AND TO
TRANSFER HIM TO KUWAIT WITHIN FIFTEEN DAYS**

Petitioner Fouad Al Rabiah ("Al Rabiah"), hereby respectfully moves the Court to order Respondents Secretary of Defense Robert M. Gates and Rear Admiral Tom Copeman¹ to show cause why they should not be held in contempt of this Court's Order of September 17, 2009, to "take all necessary and appropriate diplomatic steps to facilitate the release of Petitioner Al Rabiah forthwith" (hereinafter, "Release Order"), and further, to transfer Al Rabiah to his home country of Kuwait within fifteen days of the entry of the Court's order.

The ground for this motion, as more fully set forth in the accompanying memorandum of points and authorities, is that Respondents have refused to take any steps to facilitate Al Rabiah's release on the legally frivolous ground that they are considering whether to appeal the Release Order. Because Respondents have made clear that they

¹ Pursuant to Fed. R. Civ. P. 25(d), Rear Admiral Tom Copeman, the current commander of Joint Task Force Guantanamo, should be substituted for Respondent Rear Admiral David M. Thomas, Jr., the former commander.

will not comply with the Release Order voluntarily, civil contempt is an appropriate remedy. Moreover, because the Government of Kuwait has repeatedly requested that the United States promptly return Al Rabiah, no further diplomatic steps are necessary; this Court can and should order Respondents to return Al Rabiah to Kuwait by a date certain. *See Ahmed v. Obama*, Civil Action No. 05-1678 (GK), Order filed October 1, 2009 [dkt 249].

Certificate Required by LCvR 7(m)

Pursuant to LCvR 7(m), counsel for Petitioner contacted counsel for Respondents in a good faith effort to obtain Respondents' consent to the requested relief. Counsel for the parties exchanged e-mails and spoke by telephone on October 5, 2009, in an unsuccessful attempt to resolve this issue. The details of counsel's discussions are set forth in the accompanying Declaration of David J. Cynamon. Counsel for Respondents stated that the government opposes this motion.

Dated: October 13, 2009

Respectfully submitted,

/s/
David J. Cynamon (D.C. Bar #182477)
david.cynamon@pillsburylaw.com
Matthew J. MacLean (D.C. Bar #479257)
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Attorneys for Petitioners

Certificate of Service

I certify that on October 13, 2009, I caused the foregoing to be served on opposing counsel of record through the Court's electronic case filing system.

/s/
Matthew J. MacLean

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAWZI KHALID ABDULLAH
FAHAD AL ODAH, *et al.*,

Petitioners,

v.

UNITED STATES, *et al.*,

Respondents.

Civil Action No. CV 02-0828 (CKK)

DECLARATION OF DAVID J. CYNAMON PURSUANT TO LCvR 7(m)
IN SUPPORT OF PETITIONER FOUAD AL RABIAH'S
MOTION FOR CONTEMPT AND TRANSFER

I, David J. Cynamon, hereby declare as follows:

1. I am a member of the District of Columbia Bar and a partner in the Washington, D.C. office of Pillsbury Winthrop Shaw Pittman, LLP. Along with Matthew J. MacLean, I represent the Petitioners in the above-captioned action. I make this declaration pursuant to LCvR 7(m) to describe the background to Petitioner Fouad Al Rabiah's ("Al Rabiah") Motion for Contempt and to describe my communications with counsel for Respondents in connection with this motion.

2. In connection with my representation of Petitioners, I communicate regularly with officials of the Government of Kuwait ("Kuwait") to keep them advised of the status of the litigation, and to be kept advised of the status of diplomatic efforts to secure the repatriation of Petitioners.

3. On August 3, 2009, Kuwait's Head of State, the Emir, met in Washington, D.C. with President Barack Obama. I have been informed that during that meeting, among other things, the Emir asked the President promptly to repatriate all four Kuwaiti detainees currently at Guantanamo, including Al Rabiah and Petitioner Khalid Al Mutairi ("Al Mutairi"), whose habeas petition had been granted by this Court on July 29, 2009.

4. A subsequent meeting was held in New York on September 21, 2009, between the Prime Minister and Foreign Minister of Kuwait, and Ambassador Daniel Fried of the U.S. Department of State, who is responsible for diplomatic arrangements for release of Guantanamo detainees. I have been informed that at this meeting, the Kuwaiti officials again requested prompt repatriation of all of their citizens, including Al Rabiah and Al Mutairi.

5. By e-mail dated August 6, 2009, I asked counsel for Respondents to advise me of the date on which the government filed its report with Congress concerning Al Mutairi's release, as required by the Court's July 29, 2009 Order (the "Al Mutairi Release Order"). Counsel for Respondents did not answer the question but rather informed me that "The Government is currently considering its options with respect to the Court's decision in Mr. al-Mutairi's case, including a possible appeal as well as diplomatic considerations." A copy of my e-mail correspondence with counsel for Respondents is attached as Exhibit A.

6. After another three weeks passed with no attempt by Respondents to comply with the Release Order, I notified counsel for Respondents by e-mail dated August 24, 2009, that we intended to file a motion to hold Respondents in contempt. Pursuant to LCvR 7(m), I advised counsel that "we wish to discuss this matter to determine whether there are other facts relevant to

this issue or whether respondents have a legitimate explanation for their conduct.” A copy of this e-mail is attached as Exhibit B.

7. In response to my request, counsel for Respondents, Terry Henry and Sean O'Donnell, met with me at the Department of Justice offices at 20 Massachusetts Avenue, N.W., at 11:30 am on Friday, September 4, 2009.

8. At that meeting, Mr. Henry gave two reasons why he believed Respondents were not in contempt of the Al Mutairi Release Order. First, he said that the Government was engaged in diplomatic negotiations with Kuwait. (Because Mr. Henry invoked the protective order concerning the substance of what he told me on that subject, I will not repeat his statement in this publicly-filed declaration. However, based on my own communications with Kuwait officials, and as set forth in my e-mail dated August 24, 2009, I am aware that prior to the Al Mutairi release order the United States Government had been discussing with Kuwait the possible repatriation of all of the Petitioners subject to certain conditions demanded by the United States, including involuntary commitment to a rehabilitation program in Kuwait.) Second, Mr. Henry informed me that Respondents were considering an appeal of the Al Mutairi Release Order and that a final decision would not be made until close to the 60-day deadline, which was September 27, 2009.

9. I replied to Mr. Henry that neither reason constituted a meritorious ground for failing to comply with the Al Mutairi Release Order. In light of this Court's grant of Al Mutairi's writ of habeas corpus, Respondents had no authority to keep him imprisoned or to set conditions on his release, akin to conditions of parole. As to the second issue, I pointed out to Mr. Henry that neither the United States nor any other party can ignore a final order unless and

until the party obtains a stay of the order pending appeal. Respondents neither obtained, nor even sought, a stay of the Al Mutairi Release Order.

10. I informed Mr. Henry that, despite Respondents' contumacious behavior, Petitioners would not file a motion for contempt if the Government would agree to a date certain, in the near future, for Al Mutairi's release. Mr. Henry said that he would confer with Government officials and let me know. On September 11, 2009, Mr. Henry advised me that the Government would release Al Mutairi within thirty days. Based on that representation, Petitioners did not file a motion for contempt, and Al Mutairi was at long last returned to Kuwait on October 8, 2009.

11. After this Court granted Al Rabiha's petition for a writ of habeas corpus on September 17, 2009 (the "Al Rabiha Release Order"), I notified Mr. Henry by e-mail dated September 21, 2009, that "[i]t is imperative that the government file its report with Congress concerning Fouad Al Rabiha's release no later than next Wednesday, September 30." I further pointed out to Mr. Henry, "If the government complies in good faith with the [Al Rabiha Release Order], there is no reason why Mr. Al Rabiha cannot be returned to Kuwait at the same time, and on the same flight, as Khalid Al Mutairi." A copy of my e-mail is attached as Exhibit C.

12. I sent a follow-up e-mail on September 23, 2009, reporting to Mr. Henry the information I had received about the meeting on September 21 described in Paragraph 4 above, and asking Mr. Henry to confirm that Al Rabiha would be returned with Al Mutairi. A copy of my e-mail is attached as Exhibit D.

13. On September 29, 2009, counsel for Respondents, James Gilligan, responded to my request, stating, "After conferring with the agencies involved, I can report to you that the

government is continuing to consider its appellate options in Mr. Al Rabiah's case, and is not planning to transfer him at the same time as Mr. Al Mutairi (ISN 213)." A copy of Mr. Gilligan's e-mail is attached as Exhibit E. I responded on the same day, advising Mr. Gilligan that as he and Mr. Henry "are well aware, the fact that the government is 'continuing to consider its appellate options' is not an excuse for failure to comply with a final order." A copy of my e-mail is attached as Exhibit F.

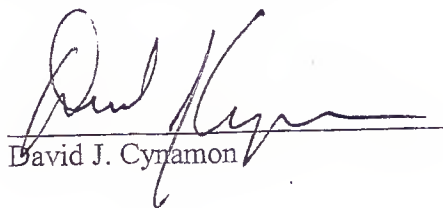
14. I met with Al Rabiah in Guantanamo on September 30 and October 1, 2009. Al Rabiah was still in the same prison camp and cell in which he was imprisoned prior to the Court's release order. During our visit, Al Rabiah's military defense counsel asked the prison authorities to transfer Al Rabiah to Camp Iguana, the camp in which detainees whose habeas petitions have been granted are housed in less restrictive conditions pending transfer to their home countries or other locations. This request was denied. Copies of the request and denial are attached as Exhibits G and H, respectively.

15. Al Rabiah informed me that he had asked the prison authorities for permission to call his family to talk to them about the decision in his habeas case, and about his return and reintegration into Kuwaiti society, but the authorities denied permission and told him that he is not eligible for a phone call to his family except under the auspices of the Red Cross 120 days hence.

16. Upon my return from Guantanamo on Monday, October 5, I called Mr. Gilligan to confer about Petitioners' motion for contempt. Mr. Gilligan reiterated the government's position that it will not take steps to return Al Rabiah to Kuwait until it decides whether to appeal his release order. He also advised me that the government will oppose the motion for contempt. A copy of my e-mail confirming this telephone discussion is attached as Exhibit I.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 8, 2009
Washington, D.C.


David J. Cynamon

2009 OCT 14 AM 10:50
CRM/ISS/REGISTRATION UNIT

Exh. A

Cynamon, David J.

From: Cynamon, David J.
Sent: Thursday, August 06, 2009 10:09 AM
To: 'O'Donnell, Sean (CIV)'; Lohrer, John (CIV); Maloney, Sarah (CIV); Walthall, Timothy (CIV)
Cc: MacLean, Matthew J.
Subject: Al Mutairi Order

I am writing pursuant to Local Rule 7(m) to confer about the government's compliance with the Court's Order of July 29, 2009, granting Khalid Al Mutairi's petition for habeas corpus. Please advise me promptly of the date on which the government filed the report with Congress required by the Supplemental Appropriations Act, Pub. L. No. 111-32, 123 Stat. 1859 (2009). If the report has not yet been filed, please advise me of the date when it will be filed and provide an explanation for the delay.

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

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Cynamon, David J.

From: O'Donnell, Sean (CIV) [Sean.O'Donnell@usdoj.gov]
Sent: Friday, August 07, 2009 6:20 PM
To: Cynamon, David J.; Lohrer, John (CIV); Maloney, Sarah (CIV); Walthall, Timothy (CIV)
Cc: Warden, Andrew (CIV); MacLean, Matthew J.
Subject: RE: Al Odah v. US, 02-828, Al Mutairi Order

Mr. Cynamon,

The Government is currently considering its options with respect to the Court's decision in Mr. al-Mutairi's habeas case, including a possible appeal as well as diplomatic considerations.

Regards,

Sean O'Donnell

From: Cynamon, David J. [mailto:david.cynamon@pillsburylaw.com]
Sent: Friday, August 07, 2009 8:56 AM
To: O'Donnell, Sean (CIV); Lohrer, John (CIV); Maloney, Sarah (CIV); Walthall, Timothy (CIV)
Cc: Warden, Andrew (CIV); MacLean, Matthew J.
Subject: Al Odah v. US, 02-828, Al Mutairi Order

Please respond by COB today to the attached e-mail that I sent you yesterday about the government's compliance with the Al Mutairi Order. The question I asked is simple and straightforward, and the answer should be easy to obtain.

Because Ambassador Fried may be involved in this aspect of compliance with the Order, I am copying Andrew Warden on this e-mail to ensure that the Ambassador is aware of this issue.

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

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From: Cynamon, David J.
Sent: Thursday, August 06, 2009 10:09 AM
To: O'Donnell, Sean (CIV); Lohrer, John (CIV); Maloney, Sarah (CIV); Walthall, Timothy (CIV)
Cc: MacLean, Matthew J.
Subject: Al Mutairi Order

I am writing pursuant to Local Rule 7(m) to confer about the government's compliance with the Court's Order of July 29, 2009, granting Khalid Al Mutairi's petition for habeas corpus. Please advise me promptly of the date on

10/6/2009

which the government filed the report with Congress required by the Supplemental Appropriations Act, Pub. L. No. 111-32, 123 Stat. 1859 (2009). If the report has not yet been filed, please advise me of the date when it will be filed and provide an explanation for the delay.

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

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10/6/2009

Exh. B

Cynamon, David J.

From: Cynamon, David J.
Sent: Monday, August 24, 2009 10:32 AM
To: O'Donnell, Thomas P.; Lohrer, John (CIV); Maloney, Sarah (CIV); 'Walthall, Timothy (CIV)'
Cc: MacLean, Matthew J.
Subject: Compliance with Al Mutairi Order

I am writing pursuant to LCvR 7(m) to request that we meet and confer, either by telephone or in person, concerning respondents' ongoing failure to comply with the Court's order in Al Mutairi's case. The order directs respondents "to take all necessary and appropriate diplomatic steps to facilitate the release of Petitioner Al Mutairi forthwith." Contrary to that direction, and despite the fact that the Government of Kuwait has made a formal, written request to the U.S. Government for Al Mutairi's release to Kuwait pursuant to the Court's order, we have been informed that respondents have demanded that Kuwait submit to certain conditions before Al Mutairi is repatriated, including, among other things, Al Mutairi's commitment to a rehabilitation program and the withholding of Al Mutairi's passport upon his return. Respondents have no authority to impose such conditions given the Court's grant of Al Mutairi's petition for habeas corpus and its conclusion that respondents have no authority to detain Al Mutairi. Such conditions are exactly the opposite of diplomatic steps necessary or appropriate to *facilitate the release of Al Mutairi forthwith*.

Moreover, we have been informed that even with respect to the inappropriate conditions demanded by the respondents, respondents are dragging their feet. The Government of Kuwait has met respondents' demand to designate a delegation from the rehabilitation program to visit Al Mutairi and the other Kuwaiti detainees at Guantanamo, yet to date respondents have not given the delegation clearance for such a visit.

Given respondents' willful failure to comply with the Court's order, we intend to file a motion to hold respondents in contempt. Before doing so, however, and in accordance with Rule 7(m), we wish to discuss this matter to determine whether there are other facts relevant to this issue or whether respondents have a legitimate explanation for their conduct.

We are available to discuss this matter today or tomorrow. If we do not have your response by COB tomorrow, we will assume that respondents do not wish to meet and confer on this issue and that respondents will oppose our motion.

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8492 | Fax: 202.663.8007 | Cell: 301.452.1114
2300 N Street, NW | Washington, DC 20037-1122

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2007 OCT 11 AM 10:51
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Exh. C

Cynamon, David J.

From: Cynamon, David J.
Sent: Monday, September 21, 2009 2:41 PM
To: Henry, Terry (CIV)
Cc: 'O'Donnell, Sean (CIV)'; MacLean, Matthew J.
Subject: Al Rabiah Release Order

Dear Terry,

It is imperative that the government file its report with Congress concerning Fouad Al Rabiah's release no later than next Wednesday, September 30, so that he is not subject to the new, longer "waiting period." This means that the IART senior review team will need to clear Mr. Al Rabiah at this Wednesday's meeting so that the report can be issued next week. As you know, there are no diplomatic steps, other than logistical arrangements, necessary to effectuate Mr. Al Rabiah's immediate release, since Kuwait has implemented all conditions demanded by the United States for the return of the Kuwaiti detainees, and those conditions are not in any event applicable to Mr. Al Rabiah, over whom the U.S. government has no authority. If the government complies in good faith with the Court's Order, there is no reason why Mr. Al Rabiah cannot be returned to Kuwait at the same time, and on the same flight, as Khaled Al Mutairi.

Please advise me when the report is filed with Congress.

Just so our position is clear, we are not going to let the government drag its feet for a month, as it did with Mr. Al Mutairi, before we take action to enforce compliance with the Court's Order.

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

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Exh. D

Cynamon, David J.

From: Cynamon, David J.
Sent: Wednesday, September 23, 2009 10:31 AM
To: Henry, Terry (CIV)
Cc: 'O'Donnell, Sean (CIV)'; MacLean, Matthew J.
Subject: Fouad Al Rabiah

Dear Terry,

Following up on my e-mail on Monday, I was informed today that this week the Prime Minister and Foreign Minister of Kuwait met with Ambassador Fried to discuss the return of the Kuwaiti detainees. I understand that Ambassador Fried confirmed that Khaled Al Mutairi would be returned in early October (as you had previously advised me) and that Fouad Al Rabiah would be returned soon as well, possibly at the same time as Al Mutairi. If true, this is very good news.

Can you confirm to me whether this report of the meeting is correct? If so, it will save us both some time and effort.

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

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2017 OCT 14 AM 10:51
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Exh. E

Cynamon, David J.

From: Gilligan, Jim (CIV) [James.Gilligan@usdoj.gov]
Sent: Tuesday, September 29, 2009 2:43 PM
To: Cynamon, David J.
Cc: Henry, Terry (CIV)
Subject: Fouad Al Rabiah

David,

I am responding to your e-mail to Terry Henry of September 23 regarding the status of your client Fouad Al Rabiah (ISN 551). After conferring with the agencies involved, I can report to you that the government is continuing to consider its appellate options in Mr. Al Rabiah's case, and is not planning to transfer him at the same time as Mr. Al Mutairi (ISN 213).

Regards,

Jim Gilligan

James J. Gilligan
Assistant Director
Federal Programs Branch
Civil Division
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044

(202) 514-3358 (phone)
(202) 616-8470 (fax)

10/5/2009

2009 OCT 14 AM 10:51
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Exh. F

Cynamon, David J.

From: Cynamon, David J.
Sent: Tuesday, September 29, 2009 4:19 PM
To: Gilligan, Jim (CIV)
Cc: Henry, Terry (CIV); MacLean, Matthew J.
Subject: RE: Fouad Al Rabiah

Dear Jim,

Thank you for your response. The ten-day automatic stay of the Court's release order has expired, and your e-mail confirms that the government is not complying with that order. As I have previously explained to Terry, and as both of you are well aware, the fact that the government "is continuing to consider its appellate options" is not an excuse for failure to comply with a final order. Accordingly, although I am in Guantanamo this week, I would like to meet with you, Terry, or whomever you deem appropriate, next Monday, October 5, to meet and confer concerning a motion to hold respondents in contempt.

From: Gilligan, Jim (CIV) [mailto:James.Gilligan@usdoj.gov]
Sent: Tue 9/29/2009 2:42 PM
To: Cynamon, David J.
Cc: Henry, Terry (CIV)
Subject: Fouad Al Rabiah

David,

I am responding to your e-mail to Terry Henry of September 23 regarding the status of your client Fouad Al Rabiah (ISN 551). After conferring with the agencies involved, I can report to you that the government is continuing to consider its appellate options in Mr. Al Rabiah's case, and is not planning to transfer him at the same time as Mr. Al Mutairi (ISN 213).

Regards,

Jim Gilligan

James J. Gilligan
Assistant Director
Federal Programs Branch
Civil Division
U.S. Department of Justice
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(202) 616-8470 (fax)

10/6/2009

2007 OCT 14 AM 10:51
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Exh. G

JTF-GTMO Commissions Request Form

Date: 30 SEP 09
From: LCDR KEVIN B. BOGUCKI, JAGC, USN
To: DETAILED COUNSEL FOR ISN SSI
JTF
Subject: ISN SSI TRANSFER TO CAMP IGUANA

Understanding that I have not previously made this request, I request the following assistance from Joint Task Force Guantanamo Bay:

Consistent with Judge Kollar-Kotelly's order in the habeas case that the government has no evidence sufficient to authorize the continued detention of Fouad Al Rabiah (ISN SSI), respectfully request his immediate transfer to Camp Iguana, pending his release and return to Kuwait.

V/r

LCDR BOGUCKI

I understand that arrangements made as a result of this request are subject to cancellation or change without notice.


Requestor

30 SEP 09
Date

JTF-GTMO Witness

Date

Exh. H

JTF-GTMO Commissions Attorney Answer Form

Date: 5 October 2009
Time: 1145
From: SJA *14B*
To: LCDR Bogucki
Subject: ISN 551 - Request for Transfer to Camp Iguana

We received your request dated 30 September 2009, requesting immediate transfer of your client, ISN 551, to Camp Iguana, based on the recent ruling in ISN 551's habeas case.

Habeas proceedings are outside the scope of your representation as Military Commissions Defense Counsel detailed to represent ISN 551 before Military Commissions. Moreover, camp assignments fall within the purview of the Joint Detention Group (JDG) Commander and are made pursuant to established Joint Task Force Guantanamo Bay (JTF-GTMO) procedures.

Thank you.

Delivered to above named attorney at _____ on _____

GTMO L FORM 3 (AUG 06)

The information contained herein is subject to the non-disclosure provision of the Protective Order

Exh. I

2009 OCT 14 AM 10:51
CRM/ISS/REGISTRATION UNIT

Cynamon, David J.

From: Cynamon, David J.
Sent: Monday, October 05, 2009 1:41 PM
To: 'Gilligan, Jim (CIV)'
Cc: Henry, Terry (CIV); MacLean, Matthew J.
Subject: Al Rabiah

Dear Jim,

This is to confirm our telephone discussion today in which you advised me that until the government decides whether to appeal the Al Rabiah release order it will not take steps to return him to Kuwait. You also indicated that the government will oppose our motion for contempt.

I told you that our position is that the government has no right to ignore a final order unless and until it obtains a stay pending appeal. Accordingly, in view of the government's position, we will proceed with our motion.

David J. Cynamon | Pillsbury Winthrop Shaw Pittman LLP

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